

Agenda Item	
A-1	No one wished to be heard during the Open Comment Period.
B-1	President John Hunziker called the meeting to order at 7:00 P.M. with the following members present: Councilmembers Dennis Hanson, Marcia Marcoux, Jean McConnell, Sandra Means, Bob Nowicki, Walter Stobaugh. Absent: None. Also present: Mayor Ardell F. Brede.
C-1	<p>Wishing to be heard was George Archer, 716 12th Avenue S.E., requesting that a tree be removed in front of their residence. Mr. Archer said that the tree has raised the sidewalk twice in the past and he has replaced the sidewalk. Mr. Archer said that he was informed that if he does nothing, he may be liable if someone is hurt. Mr. Archer had a storm sewer put in, the cement was dug up and he replaced 30 feet of the concrete. The remaining 20 feet were left because he was informed that the roots of the tree could not be cut on the east side where the sidewalk would go, the sewer cut the roots on the north side, and there would remain the possibility the tree would topple without stabilization. Four other identical trees in the neighborhood have been removed. The tree is approximately 14 feet from the front of his house and about 35-40 feet high and still growing. The roots have traveled under two driveways causing his driveway to raise. He has been informed that he has to replace the sidewalk according to code.</p> <p>Councilmember Stobaugh said that he does not agree with staff that the tree should remain. The tree has heaved the sidewalk twice and should come out. He agreed with Mr. Archer and asked him to speak to the Council.</p> <p>President Hunziker said that, after inspection of the problem, noted that the house next door has no sidewalk in front of it. He asked staff if grass could be replaced instead of the sidewalk. After the tree would die, the sidewalk could be replaced at that time.</p> <p>Mr. Archer said that he wants to get rid of the tree and keep the sidewalk. He said that it is easier to maintain the sidewalk and the lawn. He would not agree to a pedestrian agreement whereby he would replace the sidewalk after the tree dies. He said that he would be gone after five years and didn't want a new owner coming back on him for replacement costs.</p> <p>Councilmembers took the matter under advisement.</p>
D-1-17	Councilmembers Hanson moved, Nowicki seconded, to approve the following consent agenda items.
D-1	Approved the minutes of the September 8, 13 and 15, 2004, Council meetings.
D-2	Adopted Resolution No. 451-04 authorizing the Mayor and City Clerk to sign a Certificate of Completion for the Broadway Plaza project.
D-3	Approved an On-Sale Exclusive Intoxicating License, Sunday Liquor License and Dance License for Ricmar Entertainment, Inc. DBA Vannandy's Bar Club at 1615 North Broadway opening approximately November 15, 2004.

Agenda Item	
D-4	Adopted Resolution No. 452-04 setting a hearing date of October 4, 2004, to reconsider the Sidewalk Assessment for Project No. J-7035 for the property at 430 Fifth Street S.W..
D-5	Approved the transfer of the Rochester Transportation Systems, Inc. taxicab franchise to CAM Transportation, Inc. effective October 1, 2004, instruct the City Attorney to prepare the required ordinance for adoption and give the ordinance a first and second reading.
D-6	See at end of D Items.
D-7	Approved Accounts Payable of \$3,879,220.78 and Investment Purchases of \$2,996,040.83.
D-8	See at end of D Items.
D-9	Adopted Resolution No. 453-04 approving the execution of the Agreement with Olmsted County for Project No. J-4951 "Reconstruction of CSAH 1 in Rochester".
D-10	Adopted Resolution No. 454-04 establishing the Private Residential Pond Maintenance/ Transfer Policy".
D-11	Adopted Resolution No. 455-04 authorizing execution of the City/Owner Contract for Project No. J-5146 "Sanitary Sewer, Watermain and Stormsewer from STA 18+50 to STA 44+73 to Serve Superior Ridge Townhomes Phase 2", with Hartman Farms, Inc. and Friedrich Construction, Inc.
D-12	Adopted Resolution No. 456-04 establishing the City's 5-Year Bridge Replacement Program for Local Bridge Bonding and forward the resolution to the Minnesota Department of Transportation.
D-13	Adopted Resolution No. 457-04 awarding Project No. J-2594 "Restoration and Improvement at Second Street Ramp" in the amount of \$777,000 to Knutson Construction.
D-14	Adopted Resolution No. 458-04 approving payment of an additional \$25,047.44 to MnDot as part of the Municipal Cost Share Agreement for Project No. J-2269 "Highway 63 South/48 th Street SW" to be reimbursed to the City by the developer, West 80.
D-15	Adopted Resolution No. 459-04 to execute Agency Agreement No. 86842, Amendment 1, with MnDot for Federal Participation for Project No. J-9708 "Overland Drive N.W.".
D-16	Adopted Resolution No. 460-04 approving the execution of the Commerce Park Development Agreement with AC Pemwest, Inc.

Agenda Item	
D-17	Adopted Resolution No. 461-04 authorizing the City Clerk to advertise for bids for Project No. M2-13 J-7703 "Silver Creek Sub-Trunkline Sanitary Sewer Portions of Sewer Service Area 24 in Haverhill Township".
D-18	Adopted Resolution No. 462-04 entering into an assignment agreement with CAM Transportation, Inc. and RTS, Inc. whereby the ZIPS Dial-A-Ride contract is assigned to CAM Transportation, Inc. for the period of October 1, 2004 through December 31, 2005.
D-19	Adopted Resolution No. 463-04 approving the Settlement Agreement with Mr. and Mrs. Havlik for \$12, 900 of needed right-of-way for the realignment of CSAH 16 at the Rochester International Airport – Project No. J-6981. Ayes (7), Nays (0). Motion carried.
D-6	<p>At the August 30, 2004, Council meeting, Councilmembers approved Sound Amplification Permits for Pint's Pub for three consecutive Friday evenings, September 3, 10, and 17 from 7:00 to 11:00 PM. The remainder of the evenings requested were to be considered at the September 20th meeting after determining if any complaints had been received.</p> <p>The City Clerk submitted to the Council information on three complaints received during the trial period.</p> <p>Councilmember Marcoux stated that she was at Barlow Plaza at 11:45 P.M. and the music was extremely loud at Pint's Pub. It was noted that the license was to expire at 11:00 P.M.</p> <p>Councilmember Nowicki asked if the owner could appear to see what they would do to meet the Sound Amplification requirements.</p> <p>Wishing to be heard Todd Powers, 355 Elton Hills Drive, owner of Pint's Pub. Mr. Powers asked about the times and dates when the complaints had been received. They were at 8:30 PM, 11:45 PM and 12 Midnight. Mr. Powers said that one night the band had one final song that they wanted to play. He noted that the tent that is in the parking lot now has sides. The sides with additional soundproofing should help muffle loud noises. He said that when the City first granted the permits, he booked bands accordingly. Mr. Powers noted that he will lose his location and is trying to make some money to be able to start a business in a new location.</p> <p>Councilmembers agreed to provide an opportunity for Mr. Powers to present his bands for two additional weekends as a trial period. If there continues to be complaints, a hearing will be scheduled on October 4, 2004, to rescind those Sound Amplification Permits previously issued through the end of October.</p> <p>Councilmembers Stobaugh moved, Marcoux seconded, to adopt Resolution No. 464-04 approving a Sound Amplification Permit for Pint's Pub for Fridays and Saturdays, September 24 and 25 and October 1 and 2, and to begin the process to schedule a hearing for October 4, 2004, to rescind the remainder of the permits on</p>

Agenda
Item

October 9, 16, 23, 30 if the Council deems it necessary and approve the following licenses and miscellaneous activities:

Circus

Rochester Shrine Club – Mayo Civic Center – October 23 and 24, 2004

Gambling – Premise Permit

Olmsted County/Rochester Mite Hockey Association – at Mickey's Irish Pub

Gambling – Temporary

St. Francis of Assisi Church – Raffle – October 3, 2004

Healing Spirit Metropolitan Community Church – Bingo at Senior Citizens Center – November 13, 2004

Heating, Ventilating and Air Conditioning

State Mechanical, Farmington

Master Installer

Marvin Heintz, Lakeville

Sidewalks – Cement

Guyers Superior Walls, Inc., Hudson, Wisconsin

Signs

Winona Sign Company, Winona

Sound Amplification

Republican Party – President George Bush Visitation – Mayo Field Ballpark – September 16, 2004 – 3:00 to 5:00 PM (Prior Approvals: Hanson, Marcoux, Nowicki, Means, Hunziker)

Minnesota Kerry-Edwards Victory 2004 – Rally at Peace Plaza – September 16, 2004 – 12 Noon to 2:00 PM (Prior Approvals: Hanson, Marcoux, Nowicki, Means, Hunziker)

VFW, Fox Radio, Schott Distributing, Etc. – “Support Your Veterans” Concert – Olmsted County Fairgrounds – September 25, 2004 – 12 Noon to 11:00 PM

Lourdes High School – Homecoming Game and Party – John Marshall High School Stadium – October 8, 2004 – 3:00 to 8:00 PM

Century High School – Homecoming Parade – October 8, 2004 – 4:00 to 5:00 PM

Christ Community Church – Singles Group Fall Kickoff Party at 5925 25th Avenue NW – September 18, 2004 – 7:00 to 9:00 PM (Prior Approvals: Hunziker, Marcoux, Means, Nowicki, Stobaugh)

Rochester Orchestra & Chorale & 3rd Street Merchants – Street Sesquicentennial Festival at Historic Third Street – September 25, 2004 – 9:00 to 11:00 PM

Unit Here Local 21 – Immigrant Workers Freedom Ride – Soldiers Field Park – September 30, 2004 – 5:00 to 11:00 PM

Agenda Item	
	<p>Rochester Mayo High School, Homecoming Parade – October 1, 2004 – 4:00 to 5:00 PM Pint's Pub – Outdoor Band – September 24, 2004 – 7:00 to 11:00 PM</p> <p><u>Miscellaneous City Activities</u> Century High School – Homecoming Parade – October 8, 2004 – 4:00 to 5:00 PM Rochester Orchestra & Chorale & 3rd Street Merchants – Street Sesquicentennial Festival at Historic Third Street – September 25, 2004 – 9:00 to 11:00 PM Unit Here Local 21 – Immigrant Workers Freedom Ride – Soldiers Field Park – September 30, 2004 – 5:00 to 11:00 PM Rochester Mayo High School, Homecoming Parade – October 1, 2004 – 4:00 to 5:00 PM</p> <p>Ayes (7), Nays (0). Motion carried.</p>
D-8	<p>Councilmember Means was a member of the interview team when the new Police Officers were recommended to fill the vacancies in the Police Department. She said that as we continue to recruit excellent officers to serve the public, it is especially noteworthy to note that two of the new officers are women, two are ethnic minorities and one speaks several languages.</p> <p>Acknowledged the appointment of Yemane Berhane, Vanessa Mason, Jennifer Bruessel, Franklin Ohm, and Philip Paschal as officers in the Rochester Police Department.</p>
E-1	<p>A Hearing on Final Plat #04-34 by Payne Company to be known as Century Hills Outlots located adjacent to Century Hills Third Subdivision and Century Hills Second Subdivision.</p> <p>Staff asked that the item be continued to the October 4, 2004, to allow a portion of the plat to be annexed.</p> <p>No one wished to be heard at this time.</p> <p>Councilmembers Nowicki moved, Means seconded, to continue the hearing on Final Plat #04-34 by Payne Company to be known as Century Hills Outlots to October 4, 2004. Ayes (7), Nays (0). Motion carried.</p>
E-2	<p>A Hearing on Vacation Petition #04-12 by Independent School District No. 535 to vacate the public right-of-way (7th Street SW) located south of Folwell School and west of 15th Avenue SW.</p> <p>Having no one wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Marcoux moved, McConnell seconded, to adopt Resolution No. 465-04 approving Vacation Petition #04-12 by Independent School District No. 535 with two conditions. Ayes (7), Nays (0). Motion carried.</p>

Agenda Item	
E-3	<p>A Hearing on Utility Vacation Petition #04-15 by Gabriel and Janelle Cook to vacate the westerly 2.5 feet of the utility easement at 110-7 Tenth Street NW.</p> <p>Having no one wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers McConnell moved, Stobaugh seconded, to adopt Resolution No. 466-04 approving Utility Vacation Petition #04-15 by Gabriel and Janelle Cook for the encroachment of the garage area only. Ayes (7), Nays (0). Motion carried.</p>
E-4	<p>A Hearing on Vacation Petition #04-11 by Carpenter and Torgerson II, LLC to vacate the public alley right-of-way located south of 1st street SW, north of 2nd Street SW and west of 13th Avenue SW adjacent to properties recently demolished for the future construction of a hotel.</p> <p>Wishing to be heard was Dean Richter, 2626 65th Street N.E. He said that he and his wife are landlords of the building in lot 5 of the alley. He works at St. Mary's and parks in the alley. The tenants also exit from the rear of the house to the alley. Mr. Richter asked if the alley will continue to be accessible to traffic and pedestrians.</p> <p>Mike Nigbur, Public Works Department, said that the alley will be in place. The air rights above the alley will be the only thing that is vacated. Crossing will continue as it is today.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers moved, seconded, to adopt Resolution No. 467-04 approving Vacation Petition #04-11 by Carpenter and Torgerson II, LLC with one condition. Ayes (7), Nays (0). Motion carried.</p>
E-5	<p>A Hearing on Final Plat #03-49 by Emerald Green LLC, to be known as The Pines located west of 18th Avenue NW and is a continuation of 19th Avenue NW and 29th Place NW.</p> <p>Having no one wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Hanson moved, Nowicki seconded, to adopt Resolution No. 468-04 approving Final Plat #03-49 by Emerald Green LLC, to be known as The Pines with four conditions. Ayes (7), Nays (0). Motion carried.</p>
E-6	<p>A Hearing to A Hearing to Amend the 2003 and 2004 Action Plan for the City of Rochester's Community Development Block Grant (CDBG) Program.</p> <p>Having no one wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Stobaugh moved, Marcoux seconded, to approve Amending the 2003 and 2004 Action Plan for the City of Rochester's Community Development Block Grant (CDBG) Program to reallocate \$100,000 of the City's Single Family Home Rehabilitation Program. Ayes (7), Nays (0). Motion carried.</p>

Agenda Item	
E-7	<p data-bbox="350 348 1435 417">A Hearing to Consider Requests for 2005 Community Development Block Grant Program Funds.</p> <p data-bbox="350 449 1435 485">The following individuals spoke to their requests for funding under the program.</p> <p data-bbox="350 516 553 552"><u>Public Services</u></p> <p data-bbox="350 583 1175 684">Aldrich Memorial Nursery School – Amount Requested - \$7,000 Bonnie Staub, 615 4th Avenue SE, Stewartville Tammy Helgersen,</p> <p data-bbox="350 684 1167 753">Boys & Girls Club of Rochester – Amount Requested - \$15,744 Larry Kent, 1014 9th Avenue SE</p> <p data-bbox="350 753 1021 823">Camp Olson YMCA – Amount Requested - \$23,800 No one spoke</p> <p data-bbox="350 823 1240 892">Child Care Resource & Referral, Inc. – Amount Requested - \$60,000 Patrick Gannon, 1812 Northern Valley Drive NE</p> <p data-bbox="350 892 964 961">Imagine Kutzky – Amount Requested - \$57,500 Stephanie Kilen, 821 1st Street SW</p> <p data-bbox="350 961 1040 1031">NAMI Olmsted County – Amount Requested - \$5,750 No one spoke</p> <p data-bbox="350 1031 1216 1100">PossAbilities of Southern Minnesota – Amount Requested - \$5,000 Roger Dearth, 3855 Cobblestone Lane NW</p> <p data-bbox="350 1100 1349 1190">Rochester Area Disabled Athletics & Recreations, Inc. – Amount Requested - \$8,500 No one spoke</p> <p data-bbox="350 1190 1073 1260">Samaritan Bethany, Inc. – Amount Requested - \$30,000 No one spoke</p> <p data-bbox="350 1260 1146 1329">Rochester Senior Center, Inc. – Amount Requested - \$86,500 No one spoke</p> <p data-bbox="350 1329 1094 1430">SE MN Mediation Services – Amount Requested - \$5,950 Julie Roenick, 5510 Heather Drive NW Chris Miksanek, 3857 Halling Place SW</p> <p data-bbox="350 1430 1013 1499">Y Mentors Program Teresa Byland, 1874 Tiffany Cove Lane SW</p> <p data-bbox="350 1499 732 1535"><u>Architectural Barrier Removal</u></p> <p data-bbox="350 1566 1045 1635">Ability Building Center – Amount Requested - \$47,900 No one spoke</p> <p data-bbox="350 1635 1013 1705">American Red Cross – Amount Requested - \$5,000 Melanie Tschida, 6824 Mesabi Court NW</p> <p data-bbox="350 1705 1138 1774">Hiawatha Homes Foundation – Amount Requested - \$10,000 No one spoke</p> <p data-bbox="350 1795 526 1831"><u>Rehabilitation</u></p> <p data-bbox="350 1862 1029 1963">Bear Creek Services – Amount Requested - \$30,800 Ryan Hale, 4404 Salem Road SW Julie Beck</p> <p data-bbox="350 1963 1040 1999">Olmsted County HRA – Amount Requested - \$50,000</p>

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Adjourned Meeting No. 24 – September 20, 2004

7172

Agenda Item	
	<p>Dan Sturm, 227 Sixth Street West, Eyota Gary Lueders, 1619 Wilshire Court NE SE MN Center for Independent Living, Inc. – Amount Requested - \$100,000 Vicki Dalle-Molle, 2310 Second Avenue SW Senior Citizens Services, Inc. No one spoke Zumbro Valley Mental Health Center – Amount Requested - \$35,000 Alice Adamson</p> <p><u>Public Facilities</u></p> <p>City of Rochester Park & Recreation Department – Amount Requested - \$50,000 No one spoke Program Administration – Amount Requested - \$35,000 No one spoke</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Another hearing is scheduled for October 4, 2004, at 7:00 PM.</p> <p>E-8 A Hearing on Preliminary Plat #04-30 to be known as Shannon Oaks Third Subdivision by Arcon Development Inc. and approval of a Substantial Land Alteration and a Design Modification #04-08 to eliminate a mid-block pedestrian connection located south of 21st Street NE, west of the Haver Hills Development, east of Shannon Oaks 2nd Subdivision and allows for the continuation of Kerry Drive NE and Shannon Oaks Blvd. NE.</p> <p>Wishing to be heard was Dale Allen, Yaggy-Colby Associates, representing the developer. He noted agreement with the ten conditions. He noted that a mid-block pedestrian connection was not feasible; Public Works was in agreement with having no connection.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Stobaugh moved, Nowicki seconded, to approve Preliminary Plat #04-30 to be known as Shannon Oaks Third Subdivision by Arcon Development Inc. with ten conditions and adopt Resolution No. 469-04 approving the Substantial Land Alteration and Design Modification #04-08 and instructed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Ayes (7), Nays (0). Motion carried.</p>
E-9	<p>A Hearing on Preliminary Plat #04-29 to be known as Pine Ridge Estates Sixth by Denny Peterson and approval of a Substantial Land Alteration located west of TH52, east of Ponderosa Drive SW and allows for the continuation of Woodcrest Lane SW to the south.</p> <p>Wishing to be heard was Joe Wiggs, 2248 Ponderosa Drive S.W., representing the residents of Pine Ridge Estates Neighborhood Association. The Association is asking the City Council to deny approval of the preliminary plat for Pine Ridge</p>

Agenda
Item

Estates Sixth until the completion of responsibilities in Pine Ridge Estates Four and Five. Mr. Wiggs had previously sent a letter to President Hunziker and Councilmember Hanson (which was handed out at the meeting) outlining three major points. (1) A secondary access road critical to manage traffic for the expanding neighborhood. This is one of the road extensions that is proposed for Pine Ridge Estates Sixth called Ponderosa Lane S.W. (2) The plans for Pine Ridge Estates Sixth were approved without any conditions being placed on the undeveloped hillside. (3) They contend that the developer has been negligent in regard to maintenance of the undeveloped lots throughout the subdivision. They were not notified of the August 25, 2004, Planning Commission meeting or they would have presented their concerns at that meeting. Mr. Wiggs said that Item no. 4 in the minutes of August 25, 2004, make reference that secondary access must be provided. The developer's responsibility for secondary access was documented in the City Council minutes of October 6 and 20, 2003, by Jeffrey Noll, and in the October 20, 2003, minutes Mike Nigbur of the Public Works Department pointed out the maintenance agreement by the developer for the secondary access road. Mr. Wiggs then presented photos showing the secondary access road blocked at the top, washed significantly and not maintained. They are asking that the secondary access for Pine Ridge Estates Sixth be completed prior to the development. On July 27, 2004, they asked the Rochester Police Department to deploy their speed trailer. It showed that during a 13-hour period, 79 of 392 vehicles were exceeding the speed limit. A majority of the traffic is construction traffic from Pine Ridge Estates Five. This is a danger to the neighborhood children. The maintenance of the existing undeveloped lots has been negligent according to Mr. Wiggs. The hillside on the east and north of Ponderosa Drive is undeveloped, not landscaped and continues to erode creating an eyesore and a danger to the residents. The storm sewer contains large rocks and debris that do not allow for drainage. Mr. Wiggs closed saying that they are not trying to stop the development but want eyesores and previous conditions cleared prior to the start of another phase. There should be a paved access and the undeveloped hillside landscaped and controlled.

Wishing to be heard was Megan Pfrimmer, 2315 Ponderosa Drive S.W. and a member of the Association. She was present because the developer had changed a grade by ten feet in one instance. The undeveloped hillside was not graded in accordance with the grading plan approved by the City per John Wellner of the Public Works Department. Because of the developer's negligence she has suffered water damage to her new home. She talked with others in the Public Works Department who informed her that once the lot is sold to a builder, it is the responsibility of the builder to stop the water runoff. There is a catch basin on her property that collects over six lots of runoff.

Wishing to be heard was Dale Allen, Yaggy Colby Associates, representing the developer. Mr. Allen said that his office was not aware of the problems being outlined by the residents. He said that the problems need to be addressed. Mr. Allen said that the developer is in agreement with the ten conditions on Pine Ridge Estates Sixth Preliminary Plat before the Council this evening.

Mitzi Baker, Planning Department, noted that Condition #3 has been complied with the grading and establishment of the turf for the park.

Agenda
Item

Doug Nelson, Public Works Department, responded to a question from Councilmember Marcoux on the secondary access road. He said that the condition placed by the Council said it was an access road and not intended to be paved except for both ends that connected in at the top and the bottom. It was to be maintained and agreed that it has been poorly maintained since its construction. Mr. Nelson said the incident with Megan Pfrimmer has been addressed and had been brought before the Council earlier. There is a different style of casting on the drop basin in her yard which should rectify the problem. Mr. Nelson said that the last time problems with the developer came before the Council, there was a flurry of activity after talking with the developer. The activity has fallen off. There are 14 items that still need to be taken care of from the previous development.

Terry Adkins, City Attorney, in response to inquiry from the Council on what they need to do said there are three options. 1. Approve the application. 2. Approve the application with conditions. 3. Deny the application. He said that it can be shown that the developer has not complied with the required conditions on earlier applications, this application can be denied. He suggested that the Council could continue the hearing for one month to see if conditions from the previous developments have been complied with.

Doug Nelson, Public Works Department, said that there is no condition placed on the previous developments that construction traffic had to use the secondary access road.

Richard Freese, Public Works Director, said that the secondary access road is to be platted as a city street as a part of the Pine Ridge Estates Sixth Subdivision. It would not be available for use during the construction of the public infrastructure of this subdivision. The trucks will have to use Ponderosa Drive to build the streets for the secondary access. There will be an alternate route used for the construction of the homes.

Wishing to be heard was Joe Wiggs, 2248 Ponderosa Drive S.W.. He said that they already have 392 vehicles going through their development. Now there will be more contractors with more large trucks. He asked that the secondary road be completed prior to the development of Pine Ridge Estates Sixth so that the contractor's vehicles can use the route.

Wishing to be heard was Michael Woodcock, 2242 Ponderosa Drive S.W. He asked what the number of trips is for a secondary access for a development. Was the threshold reached for Pine Ridge Estates Fourth?

Mitzi Baker, Planning Department, said that a secondary access is required at or before reaching 1200 trips per day in a development.

Councilmembers Marcoux moved, Nowicki seconded, to continue Preliminary Plat #04-29 to be known as Pine Ridge Estates Sixth by Denny Peterson and approval of a Substantial Land Alteration to October 18, 2004. Ayes (7), Nays (0). Motion carried.

Agenda
Item

E-10

A Continued Hearing on Final Plat #03-48 by Pebble Creek LLC to be known as Pebble Creek located along the west side of 60th Avenue and south of 55th Street N.W.

President Hunziker said that Item H-2, Development Agreement for Pebble Creek, should also be considered with this hearing. All testimony will apply to the Final Plat and Development Agreement.

Councilmembers Stobaugh moved, Hanson seconded, to remove from the table the Development Agreement for Pebble Creek. Ayes (7), Nays (0). Motion carried.

Wishing to be heard was Julie Leitzen, Pebble Creek Rochester, LLC, 604 11th Avenue N.W. She noted that she was handed a revised condition #3 from the City Administrator's Office. She said that she feels that the adequate facilities test for the 16.2 acres has been met. On the preliminary plat, it says that the sewer and water are adequate, the current six-year plan has been taken into account and that the subdivision will not have impacts on the street, drainage water or waste water systems that exceed adopted standards. The sanitary sewer and water is on the east side of 60th Avenue from the plat, storm water is not there but is contained within the grading permit as a temporary pond until the permanent pond is there. To change Condition #3 to say that there are not adequate facilities available now is not right and she does not agree with it. Ms. Leitzen said that Condition #6, the lot is an alley lot. The access was taken away from the front of the lot at the Preliminary Plat hearing and they were told to use the access from the back. The Land Development Manual says that there has to be a certain amount of feet from the corner and to do that on a small alley lot, coming in from the alley wouldn't work. They talked with Public Works and the development agreement that they signed allows Pebble Creek Rochester, LLC to use access from the side street on the alley. In the development agreement there is a figure that the City would pay the developer to build the stormwater management ponds and also buy 6 acres of land in the environmental corridor and buy another 16 acres. Those land values were reduced to \$10,000 per acre. Everything that is paid on stormwater is indexed with the construction index. On August 1st. The development agreement does that for the \$128,000 what the City pays here for but doesn't pay that for the land. Every plat has Public Works coming up with an evaluation for land dedication values. As it is tied to the figure of what I would have to pay, I have requested that it the land values are adjusted by the cost index just like any stormwater charges. Transportation Improvement Districts are not agreed with. This is not an allowed fee in Minnesota, only voluntary that is needed when you don't have adequate public facilities. They have very good roads and adequate public facilities as documented in the Preliminary Plat findings. A compromise was offered by the City Engineer for a sub-standard street charge. That would have been not the policy that you have today. It would have been a 50 percent payment of half of the road in front up to 2 feet. It didn't account for any county payment for the county roads. 60th Avenue is an expressway. I do believe that they had the price out for only 52 feet. This was a planned expressway before our plat. There was no cost-share for the 52 feet. There was a price to rebuild Valleyhigh Drive. The road is concrete and there is nothing inadequate about it. In the compromise that was received, this roadway was to be totally demolished and rebuilt. Basically, we are required to

Agenda
Item

dedicate 75 feet for roadway. The roadway is already 66 feet. We would like to be paid for an additional 9 feet by either the City or County. The wording of the development agreement states that we donate the entire 75 feet. Sanitary Sewer availability charge was an unacceptable inequity issue. Bigelow is building in Harvestview. The SAC charge is \$2,004. Ms. Leitzen said that they use the same sewer that goes through the Bigelow property but her charge would be \$2,864. The SAC was figured at 50 percent of her land being developable. In comparing the figures and the land, it seems to be closer to 70 percent. If taking \$2,864 for only 50 percent of the land and instead divide by 75 percent of the land being developed, the result is \$2,046. Ms. Leitzen said that the Park Department should not require more than what the Land Development Manual said. The Park Department would do 50 percent of the land at 4 percent grade. The agreement was changed to reflect that Pebble Creek Rochester LLC would "have to establish vegetated cover". If the land is disturbed in the grading permit, the developer would have to reseed but the content is not stated. The Park Department had asked that if they needed additional grading done, it would be done by the developer for the cost of the grading. She said that is not in the agreement. The other conditions for the Park Department were sent by a fax and never discussed or agreed to.

Terry Adkins, City Attorney, addressed the preliminary plat which includes six conditions. He referenced in Condition #2 a letter from Public Works on February 18, 2004. Item #1 of that memo states: "Municipal sanitary sewer/water and stormwater management facilities are not currently available". Item #2: "Prior to final plat submittal and/or development of the property, the applicant shall enter into a development agreement that outlines the obligations of the applicant related to stormwater management, use and preservation of the proposed environmental corridor, transportation improvements, access control, pedestrian facilities, right-of-way dedication, contributions for public infrastructure, extension of public utilities to abutting properties, and stipulations for phasing of development subject to the availability of adequate public facilities." These first two items show an inadequacy of the plat and were agreed upon as a condition for approval by the applicant for the preliminary plat. The fact that the development agreement hasn't been provided for at the final plat hearing is grounds for denial of the final plat. He noted that the applicant had not submitted an amended preliminary plat application in order to change the conditions of approval imposed upon the original preliminary plat. Therefore, those original conditions of approval imposed upon the preliminary plat apply to this final plat application.

Richard Freese, Public Works Director, explained the development agreement. He said that the storm water management charges are adjusted by the Engineering News Record (ENR). He said that the City used market value as the basis for buying or selling or dealing with any land issues. He said that the development agreement could be revised so that there is no credit for the land but that the credit is applied in the form of construction costs. In regard to Transportation Improvement Districts and because the applicant wanted some cost figures before the agreement was signed and because the area in which this development is located is not, at this time in a Transportation Improvement District, it is proposed in the Kalmar North District that will be before the Council this year, the costs for improving the roads, referred to as the "perimeter road" was calculated. Costs

Agenda
Item

were given for a 50/50 cost-share consistent with the current City policy. The calculation gave a number defined as a "cap". If and when the Kalmer North TID is adopted by the Council, the charges for the property would not exceed that number. There is nothing in the agreement signed by Western Walls that provides for any payments for the four perimeter roads surrounding the property. On the right of way issue on Valley High Drive discussed with Ms. Leitzen this afternoon, they agreed to resolve by deleting the dedication requirement for Valley High Drive from the agreement. They agreed that when the plat comes in to be recorded, some time in the future, the City or County would be requesting a certain amount of right-of-way dedication to be dealt with at the time of platting. The staff memo indicated, in regard to the sewer availability charges, the City has attempted to try to get the sewer availability charges as competitive as possible for the surrounding property. When the Council received the petition to add the area west of 60th Avenue to the City, the Public Works Department had a capacity study and a report prepared that showed the entire sewer, from 55th Street/50th Avenue back to the Water Reclamation Plant, had to be upsized. Some of the costs are attributable to the construction between 50th and 60th Streets and the cost has been assigned to that area development, both what is developed and what will be developed in the future. In going west of 60th Avenue, there will be costs associated to the Kings Run West sewer district and the costs calculated over the amount of acres come to \$2,864 per acre. Over the past 30 years, the City has used a formula in the feasibility reports for calculating the sewer and water availability charges for newly developing area. The gross acres are divided by 2. The City assumes that 50 percent of the land area will develop and the City will collect sewer and water availability charges from 50 percent of the land. It has proven to be very accurate over time.

Gary Neumann, Assistant City Administrator, said that he wants to review the lower SAC rate issue. If you are committing to 50 percent of the entire sewer district, that's one thing. If you are committing to 70 percent to a specific piece of property, that's a different matter. The rate structure should apply to the entire water shed. The entire issue needs to be carefully looked at.

Richard Freese, Public Works Director, said that initially the development agreement included language that the owner agrees to pay the sewer availability charge as set forth in the feasibility report adopted by the City Council. He stated that the Department has yet to present that report to the Council which will set the rate for the entire sewer district. That language was stricken from the agreement by Western Walls.

Terry Adkins, City Attorney, addressed the proposed Condition #3 for this final plat. It should be similar to the inadequate public facilities language that the City is using for Prairie Crossing and Hart Farms South and just adopted for Shannon Oaks Third. It reads as follows:

"Because on and off site public facilities are currently inadequate to handle the proposed development, the development must be phased in consistent with the City's planned infrastructure improvements. Specifically, the downstream sanitary sewer has inadequate capacity to handle the proposed development, stormwater facilities are inadequate to handle the increased water runoff and needed

Agenda
Item

transportation improvements to increase the road capacity to support the development have not been included within the first three years of the capital improvements program, there are no pedestrian facilities, and the present water and sewer facilities cannot support the development. Further, no other arrangements have been made to insure that adequate utilities and transportation improvements will be available concurrent with the development. As such, no development will occur and no further development will be issued until the Council determines public facilities are adequate to accommodate this development. Alternatively, should the developer voluntarily agree to join with the City in making these inadequate public facilities adequate for this development, the developer may enter into a development agreement that outlines the developer's and city's obligations related to, but not limited to, stormwater management, use of the preservation of the environmental corridor, transportation improvements, access control, pedestrian facilities, right-of-way dedication, contributions for public infrastructure, extension of public utilities to abutting properties, and stipulations for phasing of development subject to availability of public facilities."

Mr. Adkins suggested that the Council use the statement as Condition #3 to finalize the application and discussion.

Denny Stotz, Park Department, spoke to the dedication of parkland in the development. The general development plan shows two parks in the development. The smaller park is in the current preliminary plat. The larger park, central to the entire subdivision, consists of ten acres. The location is the best spot for a park. The land is high ground, level and meets dedication requirements. He is concerned, however, with the dedication of the park and that the developer could regrade 50 percent of the park area making it less level. Eventually, the park will be graded the way it needs to be graded but will the City have to pay to have it done or be forced to accept something less level and usable than exists today. No compromise has been reached with the developer. Mr. Stotz advised the City to use the dedication ordinance that says that "half of the land shall have a natural slope of 4 percent or less". Natural meaning the way it stands at the present time. If it is graded or altered, it is subject to the Superintendent of Parks approval. Mr. Stotz said that they are accepting less land than normal because of the special district and the design. In answer to a question posed by Mitzi Baker, Planning Department, Mr. Stotz said that a normal development would have required 40-50 acres of parkland dedication to meet minimum standards. Normally the City would look at about \$30,000 worth of street frontage. In the two parks for Pebble Creek the street frontage is about \$100,000 but an important part of the designers request so that the parks were open to the neighborhood.

Chuck DeWitz, 604 11th Avenue N.W. Mr. DeWitz said that the parkland dedication is land or cash in lieu of land. The cash for the other 30 acres will be used to build the park to expectations of the City.

Wishing to be heard was Julie Leitzen, 604 11th Avenue N.W. Ms. Leitzen said that the park grade will be dependent upon the surrounding streets, which were wanted for the park by the City.

Agenda
Item

Wishing to be heard was Bob DeWitz, 604 11th Avenue N.W. He said that he did not understand how the City could say that the public facilities are inadequate when Bigelow just put a sewer line in their adjacent development. They wouldn't put a sewer line in that was inadequate.

Richard Freese, Public Works Director, said that there is an inadequacy in the downstream sewer. The sewer from West Circle Drive to the Water Reclamation Plant will need to be replaced to serve development west of 60th Avenue.

Wishing to be heard was Julie Leitzen, 604 11th Avenue N.W. She said that Harvestview development was in the land use plan prior to Pebble Creek and they will pay less for the public sewer facilities. Western Walls should not get a higher sewer rate for the same sewer line.

Having no one further wishing to be heard, President Hunziker closed the hearing.

Terry Adkins, City Attorney, said there are three options for the Council: (1) Council can continue this matter to a future meeting and hope the parties can reach agreement on the outstanding issues. (2) Deny the final plat on the basis that the application does not satisfy the City's ordinance that requires conformance with the preliminary plat conditions and the general development plan conditions and because there is no executed development agreement addressing the issues outlined, it fails to comply with that requirement. (3) Approve the final plat application with the recommended conditions, including the revised Condition #3 language read earlier, so that the final plat complies with the conditions of approval imposed on the preliminary plat.

Councilmember Means asked that the hearing be continued in an effort to reach an agreement. Councilmember McConnell said he would be in favor of continuance but only for one more meeting.


Councilmember Marcoux moved, Stobaugh seconded, to adopt Resolution No. 470-04 approving Final Plat #03-48 by Pebble Creek LLC to be known as Pebble Creek with six conditions substituting the language from Terry Adkins for Condition #3 and directed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order to come back at the October 4, 2004, meeting for final approval. Discussion.

Mitzi Baker, Planning Department, said that the Planning Department does not object to the removal of Condition #5. Richard Freese, Public Works Department, agreed that the condition was not needed.

The Council agreed by consensus to remove Condition #5 on the construction of a temporary turn-around and dedication of the applicable temporary easement required at the westerly extent of 51st Street N.W.

Ayes (7), Nays (0). Motion carried.

Agenda Item	
H-2	Councilmembers Marcoux moved, Stobaugh seconded, to deny the Development Agreement for Pebble Creek on the basis that the staff did not agree with the version signed by the applicant. Ayes (7), Nays (0). Motion carried.
F-1	Councilmembers Nowicki moved, Hanson seconded, to adopt Resolution No. 471-04 approving the separation agreement and Release concerning city employee Larry Tjepkes. Ayes (7), Nays (0). Motion carried.
G-2a	<p>An Ordinance Amending and Reenacting Section 96.01 of the Rochester Code of Ordinances, Relating to the Creation of a Taxicab Franchise in the City of Rochester, was given a first reading.</p> <p>Councilmembers Stobaugh moved, Marcoux seconded, to suspend the rules and give the Ordinance a second reading. Ayes (7), Nays (0). Motion carried. The Ordinance was given a second reading. Councilmembers McConnell moved, Stobaugh seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried.</p>
G-3a	An Ordinance Amending and Reenacting Section 73.04 of the Rochester Code of Ordinances, Relating to Obstruction of Public Thoroughfares in the City of Rochester, was given a second reading. Councilmembers Stobaugh moved, Marcoux seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried.
G-3b	An Ordinance Amending and Reenacting Sections 112.02 and 112.05 of the Rochester Code of Ordinances, Relating to a Door-To-Door Salesperson Permit, was given a second reading. Councilmembers Marcoux moved, Nowicki seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried.
G-3c	<p>An Ordinance Amending and Reenacting Subdivision 2 of Section 64D.200 of the Rochester Code of Ordinances, Relating to the Legal Description for the Land Covered by the Mayo Clinic Medical Institutional Campus Special District #3, was given a second reading. Councilmembers McConnell moved, Marcoux seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried.</p> <p>The working relationship of Councilmember Stobaugh with the Mayo Foundation was noted.</p>
G-3d	An Ordinance Rezoning Approximately 2.89 Acres of Property From the B-5 Zoning District to the R-3 Zoning District, and Amending Ordinance No. 2785, Known as the Zoning Ordinance and Land Development Manual of the City of Rochester, Minnesota, was given a second reading. Councilmembers Marcoux moved, Stobaugh seconded, to adopt the Ordinance as read. Ayes (7), Nays (0). Motion carried. (Zoning District Amendment #04-13 – located along the south side of 55 th Street NW, north of Georgetown Drive NW)
H-1	Councilmembers Marcoux moved, Nowicki seconded, to remove the item from the table on the award of the contract for Project No. J-6981 "2004 CSAH 16 Relocation at Rochester International Airport". Ayes (7), Nays (0). Motion carried.

Agenda Item	
J-1	<p data-bbox="362 352 1427 520">Councilmembers Nowicki moved, Stobaugh seconded, to adopt Resolution No. 472-04 approving a contract with Rochester Sand & Gravel in the amount of \$1,015,496.06 for Project No. J-6981 "2004 CSAH 16 Relocation at Rochester International Airport" contingent upon the acquisition of needed right-of-way for the project. Ayes (7), Nays (0). Motion carried.</p> <p data-bbox="362 554 1421 621">Having no further business, Councilmembers Hanson moved, Marcoux seconded, to adjourn the meeting. Ayes (7), Nays (0). Motion carried.</p> <div data-bbox="829 625 1377 722"> _____ City Clerk</div>